

CHAPTER 792

HEALTH AND COUNSELING PROGRAMS

SUBCHAPTER 2

DRUG-FREE WORKPLACE PROGRAM

1. **PURPOSE.** The purpose of this Subchapter is to implement Department of the Navy (DON) policy on the Drug-Free Workplace Program (DFWP) for activities serviced by Human Resources Office (HRO), Norfolk.
2. **ASSISTANCE.** Please refer to Chapter 001 of this Manual for the telephone number to call for additional information or further assistance relative to this Subchapter.
3. **BACKGROUND.** Executive Order 12564 (E.O. 12564) established a goal of achieving a drug free Federal workplace and made it a condition of employment for all Federal employees to refrain from using illegal drugs whether on-duty or off-duty. Illegal drug use by any civilian employee of the DON is incompatible with the maintenance of high standards of conduct and performance, military discipline, military readiness and safe and reliable mission accomplishment. Civilian Human Resources Manual (CHRM), Subchapter 792.3 of October 2005, and accompanying DON DFWP Handbook, set forth the Department of the Navy (DON) policy and responsibilities for DFWP implementation.
4. **COVERAGE.** This Subchapter applies to all appropriated fund and non-appropriated fund civilian employees. It also applies to applicants tentatively selected for employment as described in E.O. 12564.
5. **DEFINITIONS.** Definitions are provided at Appendix A of this Subchapter.
6. **RESPONSIBILITIES**
 - a. *Heads of Activities* will:
 - (1) Ensure that DFWP policies and procedures are carried out at the activity level consistent with this Subchapter and any other implementing directives issued by Deputy Secretary of the Navy (Civilian Human Resources) or other appropriate authorities.
 - (2) Ensure that all supervisors and managers receive mandatory DFWP training.
 - (3) Ensure that the provisions of the DFWP are publicized to all employees including drug awareness, the hazards of illegal drug use, information on the Civilian Employee Assistance Program (CEAP), and information on Safe Harbor provisions.

(4) Ensure that the activity's positions are reviewed and a determination made that the positions match the DON-wide list of Testing Designated Positions (TDPs). These positions will form the activity's TDP pool.

(5) Sign (by hand, signature stamp, or electronic signature) and ensure distribution of an individual notice to each employee whose position has been determined to meet the criteria of a TDP. This individual notice must be issued without revision and provided to the employee at least 30 days prior to the individual being subject to unannounced random testing.

(6) Ensure that a procedure is established for employees to volunteer to be included in the random drug testing program.

(7) Identify the approval level for accident, unsafe practice, or reasonable suspicion testing. Approval level may be redelegated to no lower than one level above the supervisor or manager requesting the test.

(8) Ensure that an employee found to use illegal drugs is immediately taken out of his or her TDP. The employee may be returned to his or her position as part of a counseling or rehabilitation program if the activity head determines that such action will not endanger public safety or national security. This authority to reinstate the employee to the TDP may not be further delegated.

(9) Ensure that necessary disciplinary action is taken following the provisions of this Subchapter and HRO Manual Chapter 752.

(10) Ensure that the activity's bargaining obligations with exclusively recognized labor organizations are satisfied.

(11) Review the TDP determination for non-bargaining unit employees and make a final decision on the issue. This determination cannot be further delegated.

b. Drug Program Coordinator (DPC)/Alternate DPC will:

(1) Direct, administer, and manage the DON DFWP policy and procedures for activities serviced under HRO Norfolk's DFWP.

(2) Provide advice and guidance to employees, supervisors and managers on the DFWP.

(3) Receive all drug test results from the Medical Review Officer (MRO) on behalf of serviced activities.

(4) Manage the issuance of all 30-day individual notices to occupants of TDPs and retain documentation verifying receipt of each notice. Establish and maintain a list identifying each position and employee in the TDP pool.

(5) Arrange each specimen collection from the pool of employees in TDPs and volunteers using random selection collection procedures and coordinate all other types of testing, i.e., reasonable suspicion, accident or unsafe practice, pre-employment, and follow-up.

(6) Provide and administer employee and supervisory DFWP training.

(7) Ensure that an employee is notified of his or her non-negative drug test result. There are four types of non-negative drug test results: verified positive, adulterated, substituted, or invalid.

(8) In the event of a verified positive drug test result, notify the activity head, the appropriate HRO Norfolk Specialist, the CEAP Administrator, and the supervisor/manager having the authority to initiate or approve an adverse action against the employee.

(9) Authorize deferrals of an employee's random, volunteer, or follow-up drug test.

(10) Ensure confidentiality of all documents, records, and reports prepared and maintained for the DFWP. Ensure drug test results are released only to those authorized to receive them and that such transmissions are made in a manner to ensure their integrity and confidentiality.

c. Supervisors will:

(1) Notify individual employees of a scheduled drug test.

(2) Request a deferral from the HRO Norfolk DPC an employee's random, volunteer, or follow-up drug test.

(3) Initiate a reasonable suspicion drug test after first making appropriate factual observations and obtaining higher-level approval.

(4) Initiate a post-accident or unsafe practice drug test.

(5) Upon a finding of illegal use of drugs:

(a) Refer employees, in writing, to the CEAP to obtain counseling and rehabilitation.

(b) Initiate appropriate administrative and disciplinary actions.

(c) Withdraw the job offer to an applicant who has a verified non-negative test result. See b.(7) above.

(6) Participate in initial DFWP education and every three years participate in a refresher course.

(7) Not select for any position an applicant who has had a verified positive test result within the last six months.

d. *Employees* will:

- (1) Refrain from the illegal use of drugs on-duty or off-duty at all times.
- (2) Provide urine samples when required.
- (3) Be responsible for successful completion of any rehabilitation or treatment required resulting from the illegal use of drugs.
- (4) Cooperate with the MRO in providing additional information regarding a drug test, or be subject to initiation of disciplinary action.

e. *HRO Norfolk* will:

- (1) Assume delegation authority and responsibility in appointing for serviced activities the HRO Norfolk DPC/Alternate DPC who will administer and comply with the policies and procedures of the DON DFWP.
- (2) Provide advice and guidance to employees, supervisors, and managers on disciplinary actions relating to the DFWP.
- (3) Forward to the Human Resources Service Center East any corrections to the Defense Civilian Personnel Data System (DCPDS) records pertaining to the DFWP.
- (4) Maintain records and information relating to personnel actions taken against employees following the requirements in this Subchapter.
- (5) Labor Relations Specialists will notify the HRO Norfolk DPC if positive or non-negative specimens need to be retained by the urinalysis laboratory longer than the normal one-year period, e.g., because of an adverse action appeal or enforcement of a rehabilitation plan or agreement.
- (6) The Staffing and Classification Specialists will notify the HRO Norfolk DPC of any changes to TDPs when:
 - (a) TDPs are established or abolished.
 - (b) Significant changes are made to the duties of any TDP.
 - (c) A personnel action results in a change of the incumbent of a TDP.
 - (d) The organizational location of any TDP is changed.
- (7) Labor Relations Specialists will provide to the HRO Norfolk DPC copies of any last chance agreements that contain DFWP issues.

(8) Issue the DFWP “General Notice of Drug Testing Under Department of the Navy Drug-Free Workplace Program” to all new employees during the entry on duty process.

f. *CEAP Administrator* will:

(1) Provide information regarding assessment, referral, liaison, and short-term counseling.

(2) Monitor the progress of a referred employee during the treatment and post rehabilitation program.

(3) Notify the HRO Norfolk DPC, in writing, when the employee has failed to comply with the requirements of the rehabilitation process, or when the employee is ready to return to work.

7. GENERAL PROVISIONS

a. *Notices*

(1) A General Notice of Drug Testing Under Department of the Navy Drug-Free Workplace Program,” is issued to all new hires during the employee’s orientation process.

(2) Each employee in a TDP must be issued an individual notice 30 days before the employee is subject to unannounced random testing. Employees are to sign and date the acknowledgment portion of the notice. If the employee refuses to sign the notice, the supervisor will note on the acknowledgment form that the employee has received the notice and has refused to sign it. The supervisor will then sign and date the individual notice and forward it to the HRO Norfolk DPC. An employee’s failure to sign the notice will not preclude testing of the employee. The activity will retain a copy of the notice.

b. *Voluntary Self-Referral for Safe Harbor*

(1) Safe Harbor insulates the employee from discipline for admitted acts of using illegal drugs when the agency is unaware of such use. See page B-2 of Appendix B, Safe Harbor Application. Safe Harbor is a one-time opportunity offered for any employee who meets all of the following conditions:

(a) Voluntarily identifies himself/herself as a user of illegal drugs to a supervisor or other higher level management official prior to being identified through other means or before being officially informed of an impending drug test.

(b) Obtains counseling and rehabilitation through the CEAP.

(c) Consents, in writing, to the release to appropriate management officials and CEAP Administrator all counseling and rehabilitation records related to the illegal use of drugs.

(d) Agrees to follow-up testing by the activity as part of treatment/post treatment counseling or rehabilitation.

(e) Subsequently refrains from illegal use of drugs.

(2) All of these conditions must be documented in the written agreement between the employee and the activity. Activities will provide a copy of the written agreement to the HRO Norfolk DPC.

(3) An employee who admits to drug use after being notified that he or she is scheduled for a drug test or just after a specimen is collected, or who is found to use drugs on the basis of other appropriate evidence, e.g., direct observation or evidence obtained from an arrest or criminal conviction, is not eligible for Safe Harbor. Safe Harbor is for illegal users of drugs, not drug dealers or those involved in other drug-related misconduct.

(4) An employee who meets the conditions of Safe Harbor will not be subject to discipline for the admitted acts of illegal use of drugs, including possession, for personal use. However, if the employee occupies a TDP subject to random drug testing, he or she must immediately be removed from the TDP.

(5) A supervisor will propose a removal action against an employee who invokes Safe Harbor and subsequently tests positive for illegal drugs. The subsequent positive drug test is deemed a second finding of illegal drug use.

(6) Safe Harbor does not protect the employee from actions taken resulting from loss of a security clearance.

(7) Supervisors will immediately refer employees who voluntarily seek treatment for drug use to the CEAP Administrator.

8. TYPES OF DRUGS AND TESTS PERFORMED

a. *Types of Drugs.* In accordance with Federal regulations, the DON tests employees and tentative selectees for cocaine, marijuana, amphetamines, opiates, phencyclidine (PCP), and any other drug(s) or classes of drugs subsequently approved by Department of Health and Human Services (DHHS) for testing on an agency-wide basis. Per DHHS guidelines, DON is also authorized to test for any drug(s) on Schedules I and II of the Controlled Substances Act (CSA) in cases of reasonable suspicion or after an accident or unsafe practice. The list of drugs on Schedules I and II of the CSA are located on the U.S. Drug Enforcement Administration website at <http://www.dea.gov/pubs/csa/812.htm#b> or you can contact the HRO Norfolk DPC/Alternate DPC.

b. Types of Testing

(1) Random Drug Testing. Random drug testing is the unannounced testing of an employee in a TDP using a simple random sampling (SRS) method. Use of SRS ensures that all

employees are equally likely to be selected each time a random selection is initiated. SRS does not ensure that each employee in a TDP will be tested every year, nor does SRS limit any employee to a specific number of tests throughout the year.

(a) Coverage. The Secretary of the Navy has identified certain sensitive positions that may be subject to random drug testing. The DON list of TDP descriptions, justifications, and rationale for inclusion in the testing pool is located on the DON DFWP at http://www.donhr.navy.mil/DFWP_TestDesg.asp.

(b) Supervisor Notification. The HRO Norfolk DPC will forward the names of the randomly selected donors to the Point of Contact (POC) at the activity who will notify the selected employee's first-level supervisor on the day of the drug test. The activity POC will provide the supervisor with the "Supervisor Checklist" provided at page B-3 of Appendix B. If the first level supervisor is unavailable, the activity POC will contact the employee's next higher level of supervision.

(c) Employee Notification. Supervisors should notify the employee in sufficient time to allow the employee to arrive at the collection site at the scheduled time. In general, the supervisor's notification to the employee will be approximately 15 to 30 minutes prior to the scheduled collection. Advance notice should be as brief as possible. The supervisor will notify the employee in private of the time and location of the test and explain that he/she has been randomly selected and is under no suspicion of using illegal drugs. The supervisor should provide to the employee the "Employee Checklist" and attempt to respond to any questions to avoid misunderstanding. See page B-4 of Appendix B, Employee Checklist. The employee will be instructed to take appropriate photo identification to the test site. The supervisor will discuss with a higher-level supervisor any problems that arise with regard to the employee reporting for the test as scheduled.

(d) Review of TDP Determination

1 Non-Bargaining Unit Employee. An employee who believes that his/her position has been incorrectly designated as a TDP may request the activity head to review the determination. The request must be submitted, in writing, by the employee to the activity head, via the HRO Norfolk DPC, within 15 days of receipt of the individual 30-day notice. The request must include all relevant information and set forth the reasons why the employee believes his/her position should not be a TDP. The activity head will review the request based upon the criteria applied in designating the employee's position as a TDP and issue a final written decision. This decision is not subject to further review, and it is not grievable under the Administrative Grievance System as defined in Chapter 771 of this Manual.

2 Bargaining Unit Employee. A bargaining unit employee covered by a collective bargaining agreement who seeks review of the designation of his/her position as a TDP must grieve the designation under the negotiated grievance procedure, provided the agreement does not exclude these decisions from that procedure.

3 Requesting review of the TDP determination, whether or not the employee is in a bargaining unit, will not exempt the employee from random testing during the review process or negotiated grievance procedure.

(e) Temporary Position Changes

1 An employee who is detailed, temporarily promoted, or reassigned to a TDP through a documented personnel action will be subject to random drug testing during that period, provided that the assignment is expected to exceed 30 days. Testing of an employee prior to temporary placement is not required, but the employee will be issued an individual 30-day notice when he/she enters the position and will be subject to unannounced random testing 30 days after signing the notice. A new notice is not required if the employee is moving between TDPs.

2 If an employee is temporarily promoted or reassigned out of a TDP for over 30 days, the employee should be issued another individual notice upon returning to the TDP. However, if the employee is only detailed out of his/her permanent TDP, no 30-day notice is required since the employee remains in the permanent position.

(2) Voluntary Drug Testing. Voluntary drug testing is testing of an employee who volunteers to be included in the TDP pool but who would not otherwise be subject to random testing based on the requirements of his position.

(a) Coverage. To demonstrate a commitment to DON's goal of a drug-free workplace and to set an example for others, an employee not in a TDP may volunteer to be included in the random drug testing program. This employee will then be included in the pool of TDPs and will be subject to the conditions and procedures of random drug testing. A written request for voluntary testing under the DON DFWP must be submitted through the immediate supervisor to the HRO Norfolk DPC. See page B-5 of Appendix B, Voluntary Drug Testing Application and Acknowledgement.

(b) Documentation. Within 10 working days of receipt of a request for voluntary drug testing, the HRO Norfolk DPC will provide to the requesting employee two copies of an acknowledgment notice. The employee must return to the HRO Norfolk DPC one signed copy no later than 10 working days after receipt. Failure to do so will be viewed as a withdrawal of the request for voluntary drug testing. The HRO Norfolk DPC will retain the employee's signed acknowledgment notice. If the employee later chooses to withdraw from voluntary testing, he/she may do so by annotating a copy of the acknowledgment notice indicating withdrawal of the request and the effective date, and returning it to the HRO Norfolk DPC.

(3) Pre-employment Drug Testing. Pre-employment drug testing is testing of an individual tentatively selected for a TDP.

(a) Coverage. Drug testing is required of any individual tentatively selected for or placed in a TDP, unless it is only a temporary position change of 30 days or less. Selections may include those made under merit promotion procedures or any other personnel action resulting in the placement of an individual in a TDP, e.g., reassignment, promotion, and change to lower

grade actions. Referrals from the Priority Placement Program to a TDP are not exempted from pre-employment testing.

(b) Pre-employment drug testing is not required under the following conditions, when:

1 An individual currently occupies a TDP within the Department of Defense.

2 An active duty military member is selected who will have a break in service from military to civilian duty of three days or less.

3 A reservist military member is in a drilling status.

4 A selection involves only a temporary position change of 30 days or less.

(c) Pre-employment testing is not applicable to management directed actions including placement made under reduction-in-force (RIF) procedures or management decisions to reassign, detail, demote, or upgrade a security clearance.

(d) Vacancy Announcements. All vacancy announcements for TDPs will contain a notice to applicants regarding the requirement for submitting to a drug test and receiving a negative result prior to final selection.

(e) Activities are not authorized to test applicants for non-TDP positions.

(4) Reasonable Suspicion Drug Testing. Reasonable suspicion drug testing is testing of an employee based on specific objective facts and reasonable inferences drawn from those facts that the employee is using illegal drugs.

(a) Determination. Management is authorized to test an employee in a TDP when there is reason to suspect that the employee uses illegal drugs whether on-duty or off-duty. Management is also authorized to test any employee in any position (TDP or non-TDP) when there is reasonable suspicion that the employee is using drugs illegally on-duty or performing work while drug-impaired. Although reasonable suspicion testing does not require certainty, mere hunches or rumors are not sufficient to meet this standard.

(b) Reasonable suspicion testing of employees in TDPs may be based upon, but is not limited to, the following factors:

1 Observable phenomena such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug.

2 Arrest or conviction for an on-duty or off-duty drug-related offense or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.

3 Information provided either by reliable and credible sources or independently corroborated.

4 Newly discovered evidence that the employee tampered with a previous drug test.

5 Temperature or color of the urine specimen or other evidence indicates probable adulteration, tampering, or substitution.

(c) Authorization. If an employee is suspected of illegal use of drugs, the appropriate supervisor or management official will gather all information, facts, and circumstances leading to and supporting this suspicion. Immediately, upon approval, the HRO Norfolk DPC must be notified by the approving official of the requirement to arrange a drug test. If practicable, the decision to conduct the drug test will be made the same day the event or behavior occurred or as soon as management becomes aware of the event or behavior.

(d) Scheduling. The HRO Norfolk DPC will arrange for the collection to be conducted the same day as the test is approved by management, if possible, but not later than 24 hours after the event that caused the determination. The test may be conducted without regard to the employee's regular work shift, and overtime pay or compensatory time will be provided as needed.

(e) Notification. The immediate supervisor, if not directly involved in the reasonable suspicion determination, i.e., the incident occurred away from immediate work site, will be notified by the HRO Norfolk DPC that an emergency collection procedure has been initiated. If the immediate supervisor is not available, the next higher level of supervision will be contacted. The HRO Norfolk DPC will provide the supervisor with the time and location of the collection and the necessary information to be conveyed to the employee. The supervisor or manager will notify the employee of the exact time and location of the test and issue the specific written notice that he/she is being tested for reasonable suspicion. The employee will be directed to take an appropriate photo identification and will be escorted to the test site by the supervisor or other management official. The employee will provide a urine specimen under direct observation if there is a specific reason to believe that the employee may alter or substitute the specimen, otherwise standard unobserved collection procedures will be followed.

(f) Documentation. The appropriate supervisor or manager will detail, in writing, the circumstances that warranted the drug test. At a minimum, the report will include the appropriate date and time of the reported drug-related incident, reliable or credible sources of information, reasons leading to the test, and second-level supervisory concurrence. Page B-6 of Appendix B provides a Drug-Related Incident Report form. If the collection is being performed under direct observation the reason for this method of collection must also be documented. Action taken as a result of the drug test must be forwarded to the HRO Norfolk DPC who will retain a copy of the documentation.

(g) Types of Drugs. In addition to testing for cocaine, marijuana, amphetamines, opiates, and PCP, activities performing a reasonable suspicion drug test are authorized to include

any drug(s) on Schedules I and II of the CSA. The activity must specify the drug(s) for which they request the employee be tested on the Federal Custody and Control Document.

(5) Follow-up Drug Testing. Follow-up drug testing is testing of an employee as part of, or follow-up to, a drug rehabilitation or counseling program.

(a) Coverage. All DON employees referred through administrative action to counseling or rehabilitation through the CEAP for illegal drug use will be subject to unannounced, follow-up drug testing. The employee will be tested for a period of at least one year or for such time as specified in an abeyance agreement, rehabilitation plan, or other form of written agreement.

(b) Notification. The supervisor or manager will notify the HRO Norfolk DPC upon the employee's return to work, if he/she was in a non-duty status, so that follow-up testing can begin. The HRO Norfolk CEAP Administrator will notify the supervisor or manager and the HRO Norfolk DPC, in writing, if the employee fails to complete the initial or in-patient counseling or rehabilitation program. The HRO Norfolk CEAP Administrator will also notify the supervisor or manager and the HRO Norfolk DPC, in writing, on completion of initial or in-patient counseling or rehabilitation program so follow-up testing can begin.

(c) Documentation. The abeyance/last chance agreement, rehabilitation plan, or other form of written agreement will be retained by the HRO Norfolk CEAP Administrator and serve as evidence that the employee was aware of the requirement for follow-up testing. A copy of any agreement will be furnished to the HRO Norfolk DPC.

(d) Frequency. Employees subject to follow-up testing will be tested at a frequency determined by the activity. The testing rate should not be specified in the agreement or rehabilitation plan, and the employee should not be given an additional notification time period other than what is needed for the employee to report to the testing site.

(e) Collection Procedures. Follow-up testing is conducted under direct observation.

(6) Accident or Unsafe Practice Drug Testing. Accident or unsafe practice drug testing is testing of an employee based on the circumstances of an on-the-job accident or unsafe, on-duty, job-related activity when his/her actions are reasonably suspected of having caused or contributed to an accident or unsafe practice.

(a) Determination. Employees may be subject to testing that meets either of the following criteria:

1 The accident or unsafe practice results in a death, or personal injury requiring hospitalization.

2 The accident or unsafe practice results in damage to government or private property estimated to be in excess of \$10,000.

(b) Authorization. If a supervisor or manager suspects that an employee has caused or contributed to an on-the-job accident or unsafe, on-duty, job-related activity that meets either of the above criteria, he/she will gather all information, facts, and circumstances leading to the accident or unsafe practice. Approval for testing must be received from at least one level above the supervisor or manager requesting the test.

(c) Scheduling. If practicable, the decision to conduct a test will be made the same day the event or behavior occurs, or as soon as management becomes aware of the event or behavior. Immediately, upon approval, the HRO Norfolk DPC must be notified by the approving official of the requirement to arrange a test. When possible, the HRO Norfolk DPC will arrange for the collection on the same day as the test was approved by management. The test may be conducted without regard to the employee's regular work shift, and overtime pay or compensatory time will be provided as needed.

(d) Notification. The immediate supervisor, if unaware of the incident, will be notified by the HRO Norfolk DPC that an emergency collection procedure has been initiated. If the immediate supervisor is not available, the next higher level of supervision will be contacted. The HRO Norfolk DPC will provide the supervisor with the estimated time and location of the collection and any necessary information to be conveyed to the employee. The supervisor or management official will notify the employee of the test and issue the specific written notice that the employee is being tested because of the accident or unsafe practice. The supervisor will inform the employee of the time and location of the test, direct him/her to take appropriate photo identification, and escort the employee to the test site.

(e) Documentation. Once approval has been obtained for testing, the supervisor will prepare written documentation which, at a minimum, will include the date, time and circumstances surrounding the incident, the reasons leading to the test, second-level supervisory concurrence, findings of the test, and any action taken. The Drug-Related Incident Report form is located on page B-6 of Appendix B. A copy of the documentation will be forwarded to the HRO Norfolk DPC within 10 working days.

(f) Types of Drugs. In addition to testing for cocaine, marijuana, amphetamines, opiates, and PCP, activities and commands performing post accident or unsafe practice testing are authorized to include any drug(s) on Schedules I and II of the CSA. The activity must specify the drug(s) for which the employee is being tested on the Federal Custody and Control Form.

9. COLLECTION PROCEDURES

a. Generally, an individual subject to testing will be permitted to provide a urine specimen privately in a restroom stall or similar enclosure so that the employee is not visually observed while providing the specimen. Collection site personnel of the same gender will escort the employee or applicant to the restroom and remain outside the stall during the test.

b. If an activity has reason to believe that the donor may alter or substitute the specimen, the individual may be required to provide the specimen under direct visual observation. Observers

must be the same gender as the donor and must observe the urine flow from the body to the catch container. Examples of situations calling for direct visual observation include:

- (1) The individual has previously been found by the DON to be an illegal drug user and is undergoing follow-up testing. This includes employees with Safe Harbor agreements.
- (2) Facts and circumstances suggest that the individual has equipment or materials capable of tampering with or adulterating a urine specimen.
- (3) The individual has previously tampered with a specimen.
- (4) The first specimen provided was outside the temperature range specified by DHHS, discolored, or does not have a typical urine odor.

10. DEFERRAL OF TESTING

a. A deferral of an employee's random, voluntary, or follow-up drug test is authorized by the HRO Norfolk DPC when requested by the employee's first level or higher-level supervisor. The reason for the deferral must be noted. The conditions of granting a deferral of follow-up drug testing are the same as those of deferring a random drug test. Grounds for deferral are when the employee is:

- (1) In a non-duty status such as annual leave, sick leave, suspension, absent without leave, continuation of pay, end of the work day, etc. Any leave requests submitted after notice of a drug test should be carefully scrutinized and documentation requested.
- (2) In an official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.
- (3) Working a different shift.
- (4) Performing a task or project that requires the employee's presence at the work site during the scheduled test time. The supervisor will inform the HRO Norfolk DPC of the reason for the deferral request.

b. *Exemption during Treatment and Rehabilitation.* While undergoing initial treatment or rehabilitation through the CEAP, and at the request of the HRO Norfolk CEAP Administrator, the employee may be exempted from random drug testing for a period not to exceed 60 days or as specified in an abeyance\last chance agreement or rehabilitation plan. Upon completion of the stipulated exemption, the employee will be included in a separate testing pool at the activity as follow-up to counseling or rehabilitation for illegal drug use for a period of at least one year. The employee will also remain in the regular random testing pool if he/she occupies a TDP.

11. VERIFIED POSITIVE OR NON-NEGATIVE DRUG TEST RESULTS

a. The MRO will evaluate alternative medical explanation of a verified positive or non-negative drug test result. This may include conducting a medical interview with the individual, review of the individual's medical history, or consideration of other relevant biomedical factors. The individual will have an opportunity to discuss the test results with the MRO, although a face-to-face interview is not required. Individuals are not entitled to present evidence to the MRO in a hearing or other similar administrative proceeding; however, the MRO has the discretion to accept evidence in any manner deemed efficient or necessary. If the MRO determines there is no medical justification for the positive, adulterated, or substituted test result, such result will be considered a verified positive, adulterated, substituted or invalid test result.

b. Only the MRO is authorized to order a reanalysis of the original specimen at the employee's request and only in certain circumstances. The request for reanalysis must be in writing. Since some drug levels may deteriorate or be lost during freezing and/or storage, a retest must only show that a drug or its metabolite is present to reconfirm its presence during retesting.

12. CONSEQUENCES OF ACTIONS IN THE DFWP

a. Mandatory Administrative Actions with a finding of Illegal Drug Use:

(1) CEAP Referral. An employee found to use illegal drugs must be referred to HRO Norfolk CEAP.

(2) Position Actions. If the employee occupies a TDP, the employee must immediately be removed from the position through appropriate personnel action. The activity head may return the employee to duty in a TDP as part of a rehabilitation or counseling program if it would not endanger public safety or national security. The employee may be assigned to a non-TDP, if available.

b. Disciplinary/Adverse Action with a Finding of Illegal Drug Use:

(1) Activities will initiate disciplinary action against an employee for the first instance of illegal drug use in accordance with Chapter 752 of this Manual unless the employee meets the conditions of Safe Harbor. The "Schedule of Offenses and Recommended Remedies" in Chapter 752 of this Manual allows for a 14-day suspension, up to removal, for the first offense for unlawful use, being under the influence, or possession of drugs or drug paraphernalia on or off-duty. When the drug offense occurs on a military ship, aircraft, or submarine, the range of remedies is a 30-day suspension, up to removal, for the first offense. The activity will initiate disciplinary action, up to and including removal, for an employee who refuses mandatory CEAP counseling and/or rehabilitation after having been found to use illegal drugs.

(2) The activity will propose removal for a second finding of illegal drug use.

(3) Disciplinary action taken must be consistent with the provisions of Chapter 752 of this Manual and the requirements of any applicable collective bargaining agreement. Advice and guidance on disciplinary or adverse actions will be provided by the Labor Relations staff of HRO Norfolk.

c. Consequences for Other than Illegal Drug Use:

(1) An employee who fails to appear for testing will be subject to the same range of discipline as a verified positive drug test result.

(2) An employee who refuses to be tested when required will be subject to the same range of discipline as a verified positive drug test result.

(3) Any applicant who refuses to be tested will be denied employment.